Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

October Term, 1979
No. 78-1577

SEARS, ROEBUCK AND CO., a corporation,
Petitioner,

vs.

COUNTY OF LOS ANGELES and CITY OF COMPTON,
Respondents.

On Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

PETITION FOR CERTIORARI FILED APRIL 16, 1979.

CERTIORARI GRANTED OCTOBER 1, 1979.

APPENDIX

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APPENDIX

RELEVANT DOCKET ENTRIES IN THE PROCEEDING BELOW
(Chronological List)

	Item	Date
1.	Complaint for Refund of Taxes Paid (Los Angeles Superior Court)	Filed February 25, 1977
2.	First Amended Answer (Los Angeles Superior Court)	Filed April 28, 1977
3.	Stipulation of Facts (Los Angeles Superior Court)	Filed January 23, 1978
4.	Notice of Motion for Summary Judgment (Los Angeles Superior Court)	Filed January 23, 1978
5.	Cross-Motion for Summary Judgment (Los Angeles Superior Court)	Filed January 24, 1978
6.	Hearing on Motion and Cross-Motion for Summary Judgment (Los Angeles Superior Court)	February 16, 1978
7.	Order and Judgment Granting Plaintiff's Motion for Summary Judgment and Denying Defendants' Cross-Motion for Summary Judgment (Los Angeles Superior Court)	Filed March 7, 1978 and Entered March 13, 1978
8.	Notice of Appeal (Los Angeles Superior Court)	Filed March 13, 1978
9.	Opinion of the Court of Appeal of the State of California, Second Appellate District, Division Three	Filed October 25, 1978
10.	Denial of Petition for Hearing in the Supreme Court of California	January 17, 1979
11.	Petition for Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District	Granted October 1, 1979

Complaint for Refund of Taxes Paid.

Superior Court of the State of California, for the County of Los Angeles.

Sears, Roebuck and Co., a corporation, Plaintiff, vs. County of Los Angeles, State of California, a body corporate and politic; City of Compton, State of California, a Municipal corporation, Does I-X, inclusive, Defendants. No. C191156.

Plaintiff alleges as follows:

FIRST CAUSE OF ACTION
(Against City of Compton
and County of Los Angeles)

1. At all times mentioned herein, plaintiff has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of New York, qualified to transact business in the State of California, and having its principal place of business in California located in the County of Los Angeles.

2. At all times mentioned herein, defendant County of Los Angeles has been and now is a political subdivision of the State of California and a body politic and corporate having powers and authority to levy taxes.

3. At all times mentioned herein, defendant City of Compton has been and now is a municipal corporation located within the County of Los Angeles, organized and existing under a freeholder's charter pursuant to the constitution and laws of the State of California.

4. At all times mentioned herein, the City of Compton, pursuant to statute, has duly authorized the County of Los Angeles to act as an assessing and collecting agent for the assessment and collection of property taxes for the City of Compton, and at all times mentioned herein the County of Los Angeles through its qualified officers has duly acted in such capacity for and on behalf of the City of Compton.

5. The assessor of defendant County assessed to plaintiff for the tax fiscal year 1976-1977 certain personal property, being business inventory manufactured or produced outside of the United States and brought into California for transshipment out of said State for sale in the ordinary course of business. No portion of said personal property was in the manufacturing or production process.

6. In making said assessment, the assessor erroneously determined that the full cash value and assessed value of said property as of the lien date for said fiscal year, $4,724,738.00 and $1,181,184.50, respectively, were subject to taxation. In fact, all of said property was exempt from taxation by virtue of Revenue and Taxation Code Sections 225 and 225.1. Said erroneous assessment of plaintiff's property resulted in an excessive levy of taxes in the amount of $78,856.76. As of the lien date, all of said property was located at 615 West Walnut Street, Compton, California.

7. On or about August 30, 1976, plaintiff paid under protest the whole of said tax to the tax collector of defendant County, together with other taxes levied against plaintiff. A true and correct copy of said written protest is attached hereto, marked Exhibit "A" and incorporated herein by this reference as though set forth in full.

8. On September 13, 1976, plaintiff duly filed with the County of Los Angeles Assessment Appeals Board an Application for Equalization of 1976 Assessment, pursuant to the provisions of Revenue and Taxation Code, Division 1, Part 3. A true and correct copy

of said Application is attached hereto, marked Exhibit "B-8", and incorporated herein by this reference as though set forth in full. Said Application was heard by said Board on February 22, 1977, and was denied.

9. Said assessor, acting as aforesaid, has erroneously and mistakenly assessed and collected said taxes levied by defendant County in that said assessor improperly disregarded the exemption provided in Revenue and Taxation Code Sections 225 and 225.1. Said assessment and the denial of plaintiff's Application by the Assessment Appeals Board were arbitrary and capricious.

10. No refund of said taxes, or any part thereof, has been made to plaintiff or to anyone acting on its behalf.

SECOND CAUSE OF ACTION
(Against County of Los Angeles)

11. Plaintiff refers to Paragraphs 1-2, 5, 7, 9 and 10 of its First Cause of Action, and by this reference incorporates the same herein as though set forth in full.

12. In making said assessment, the assessor erroneously determined that the full cash value and assessed value of said property as of the lien date for said fiscal year, $2,931,760.00 and $732,940.00, respectively, were subject to taxation. In fact, all of said property was exempt from taxation by virtue of Revenue and Taxation Code Sections 225 and 225.1. Said erroneous assessment of plaintiff's property resulted in an excessive levy of taxes in the amount of $43,884.78. As of the lien date all of said property was located in an unincorporated area of the County of Los Angeles known as 19400 Laurel Park Road, Compton, California.

13. On September 13, 1976, plaintiff duly filed with the County of Los Angeles Assessment Appeals Board an Application for Equalization of 1976 Assessment, pursuant to the provisions of Revenue and Taxation Code, Division 1, Part 3. A true and correct copy of said Application is attached hereto, marked Exhibit "B-7", and incorporated herein by this reference as though set forth in full. Said Application was heared by said Board on February 22, 1977, and was denied.

THIRD CAUSE OF ACTION
(Against County of Los Angeles)

14. Plaintiff refers to Paragraphs 1-2, 4-5, 7, 9 and 10 of its First Cause of Action, and by this reference incorporates the same herein as though set forth in full.

15. In making said assessment, the assessor erroneously determined that the full cash value and assessed value of said property as of the lien date for said fiscal year, $7,266.00 and $1,816.50, respectively, were subject to taxation. In fact, all of said property was exempt from taxation by virtue of Revenue and Taxation Code Sections 225 and 225.1. Said erroneous assessment of plaintiff's property resulted in an excessive levy of taxes in the amount of $96.44. As of the lien date all of said property was located at 2834 Supply Avenue, Los Angeles, California.

16. On September 13, 1976, plaintiff duly filed with the County of Los Angeles Assessment Appeals Board an Application for Equalization of 1976 Assessment, pursuant to the provisions of Revenue and Taxation Code, Division 1, Part 3. A true and correct copy of said Application is attached hereto, marked Exhibit "B-6", and incorporated herein by this reference as though set forth in full. Said Application was heard by said Board on February 22, 1977, and was denied.

FOURTH CAUSE OF ACTION
(Against County of Los Angeles)

17. Plaintiff refers to Paragraphs 1-2, 4-5, 7, 9 and 10 of its First Cause of Action, and by this reference incorporates the same herein as though set forth in full.

18. In making said assessment, the assessor erroneously determined that the full cash value and assessed value of said property as of the lien date for said fiscal year, $11,709,325.00 and $2,927,331.25, respectively, were subject to taxation. In fact, all of said property was exempt from taxation by virtue of Revenue and Taxation Code Sections 225 and 225.1. Said erroneous assessment of plaintiff's property resulted in an excessive levy of taxes in the amount of $159,482.94. As of the lien date all of said property was located at 1430 South Eastman Avenue, Los Angeles, California.

19. On September 13, 1976, plaintiff duly filed with the County of Los Angeles Assessment Appeals Board an Application for Equalization of 1976 Assessment, pursuant to the provisions of Revenue and Taxation Code, Division 1, Part 3. A true and correct copy of said Application is attached hereto, marked Exhibit "B-1" through "B-5" and "B-9" through "B-25", and incorporated herein by this reference as though set forth in full. Said Application was heard by said Board on February 22. 1977 and was denied.

WHEREFORE, plaintiff prays for judgment as follows:

1. On its First Cause of Action, against defendants County of Los Angeles and City of Compton for a refund of $78,856.76;

2. On its Second, Third and Fourth Causes of Action, against defendant County of Los Angeles for a refund of $203,464.16;

3. On all causes of action, for interest, costs of suit and attorneys' fees; and

4. For such other and further relief as the Court deems just and proper.

DATED: February 25, 1977.

LOEB AND LOEB
/s/ Frank M. Keesling
Attorneys for Plaintiff

EXHIBITS TO COMPLAINT
HAVE BEEN DELETED

First Amended Answer to First Amended Complaint.

Superior Court of the State of California, for the County of Los Angeles.

Sears, Roebuck and Co., a corporation, Plaintiff, vs. County of Los Angeles, State of California, a body corporate and politic; City of Compton, State of California, a Municipal corporation, Does I-X, Inclusive, Defendants. No. C191156.

Defendants, COUNTY OF LOS ANGELES and CITY OF COMPTON, having filed their previous answer in error, supersede said answer with the following denials, admissions, and allegations:

1. Answering Paragraphs 1, 8, 10, 13, 16, and 19 of the complaint herein, defendants do not have information or belief sufficient to enable them to answer the allegations set forth therein and on that basis deny them.

2. Answering Paragraphs 2, 3, 4, and 7 of the complaint herein, defendants admit the allegations set for (*sic*) therein with the exception that the contents of the exhibit referred to are denied.

3. Answering Paragraphs 6, 9, 12, 15, and 18 of the complaint herein, defendants deny the allegations set forth therein with the exception of the alleged location of the goods which location is admitted.

4. Answering Paragraph 5 of the complaint herein, defendants admit that the assessor of defendant COUNTY assessed the plaintiff for the tax fiscal year 1976-77 certain personal property. Defendants deny that said property was brought into the State for the purpose of transshipment. Defendants do not have information or belief sufficient to enable them to answer the remaining allegations of said paragraph and on that basis deny them.

5. Answering Paragraphs 11, 14, and 17 of the complaint herein, defendants refer to their answers to the paragraphs set forth therein and incorporate said answers by reference.

BY WAY OF AFFIRMATIVE DEFENSES THE DEFENDANTS ALLEGE AS FOLLOWS:

6. That the plaintiff's complaint fails to state a cause of action;

7. That the plaintiff has failed to exhaust its administrative remedies;

8. That the Statute of Limitations (Revenue and Taxation Code Section 5138) has expired; and

9. That the plaintiff has based its complaint on legal theories which have not been embodied in any claim or letter of protest submitted to defendants.

WHEREFORE, defendants pray:

1. That plaintiff take nothing by its complaint herein;

2. That defendants be awarded their costs of suit; and

3. That defendants be awarded such other and further relief as the Court deems proper.

DATED: *April 28, 1977.*

JOHN H. LARSON, County Counsel
/s/ By James Dexter Clark
JAMES DEXTER CLARK
Deputy County Counsel
Attorneys for Defendants

Stipulation of Facts.

Superior Court of the State of California, for the County of Los Angeles.

Sears, Roebuck and Co., a corporation, Plaintiff, vs. County of Los Angeles, State of California, a body corporate and politic; City of Compton, State of California, a Municipal corporation. Does I-X, inclusive, Defendants. No. C 191 156.

Filed: January 23, 1978.

It is hereby stipulated by and between plaintiff, SEARS, ROEBUCK AND CO., a New York corporation, and defendants, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA and CITY OF COMPTON, STATE OF CALIFORNIA, through their respective attorneys of record, that for the purpose of determining the issues of law raised in this case the following facts are true, undisputed, and may be treated by the Court as facts proved in open court:

1. SEARS, ROEBUCK AND CO. ("Sears"), a New York Corporation, is an integrated company performing the functions of purchasing, importing, distributing, and selling goods at retail. Those goods which are the subject matter of this litigation are manufactured or produced outside of the United States (hereinafter "the goods"). They are purchased by the plaintiff and brought into California where they are held awaiting distribution to destinations both within and outside of the state, as described in paragraph 7 below. The goods are manufactured for the purpose of sale in the ordinary course of Sears' trade or business. No portion of the goods was in the manufacturing or production process at any time material hereto.

2. Sears retails its goods throughout the United States. Its distribution and retail facilities are in many locations, including Los Angeles County. Its corporate headquarters are located in Chicago, Illinois and most of the planning and purchasing functions are performed at that location.

3. Defendant County of Los Angeles is a charter political subdivision of the State of California, duly empowered to collect and levy ad valorem property taxes for itself and for certain municipal corporations, including the City of Compton.

4. During 1975, the Legislature of the State of California voted to enact legislation which is now codified as Sections 225 and 225.1 of the Revenue and Taxation Code. The Governor signed the bill (SB 389) and it became effective on January 1, 1976. A copy of SB 389 is attached, marked Exhibit "A", and made a part hereof as if fully set forth.

5. On March 1, 1976, Sears was holding certain personal property at various warehouses throughout the County, including a warehouse in the City of Compton. These warehouses were distribution warehouses. Subsequent to March 1, 1976, the goods in said distribution warehouses were forwarded to Sears' retail stores and catalogue distribution centers throughout the country. The distribution warehouses located in the County of Los Angeles were devoted almost entirely to the distribution of goods which were imported from foreign countries, particularly from locations in the Pacific area.

6. During the year preceding the lien date, Sears made out-of-state shipments and shipments within California of the goods, all as set forth in Exhibit "B", attached hereto and made a part hereof as if fully

set forth. Exhibit "B" also discloses the amount of Sears' imported goods on hand at the warehouses in Los Angeles County as of 12:01 a.m. on March 1, 1976.

7. (a) The distribution warehouses function as a distributor of all the goods imported by Sears into Los Angeles County.

(b) Other Sears' warehouses, not in the County of Los Angeles, are operated for the purpose of long-term storage. In contrast, the goods at issue in this case are meant to be shipped as quickly as distribution operations permit.

(c) The rate of turnover at the distribution warehouses averages approximately 3 times per year, with a range of 1½ times to 4½ times per year.

8. Virtually all of the goods arrived at the warehouses by means of shipment in cargo shipping containers ("sea vans"). After arrival at the warehouses, the goods were taken from the cargo shipping containers, and were held pending shipment to the Sears stores and catalogue distribution centers. While being held in the warehouses, the goods remained in the original cardboard boxes in which they were imported.

9. For the tax fiscal year 1976-77, the assessor of defendant Los Angeles County assessed to Sears an ad valorem personal property tax based upon all of the goods which are the subject matter of this action. Sears paid said tax under protest, claiming an exemption pursuant to Revenue and Taxation Code Sections 225 and 225.1, and thereafter duly exhausted its administrative remedies. No refund of any portion of said taxes was made to Sears, and this action was duly commenced.

10. The State Board of Equalization has promulgated a form for use in claiming exemptions under Revenue and Taxation Code Sections 225 and 225.1, a copy of which is attached hereto as the first page of Exhibit "C". The second page of Exhibit "C" (the reverse side of the form) consists of a form for use in claiming constitutional immunity for goods in transit in interstate or foreign commerce. The Los Angeles County Assessor has granted no exemption for the years 1976 or 1977 under Sections 225 or 225.1.

DATED: December 9, 1977.

LOEB AND LOEB
By /s/ Frank M. Keesling
Frank M. Keesling
Attorneys for Plaintiff

DATED: December 21, 1977.

JOHN H. LARSON,
County Counsel
JAMES DEXTER CLARK,
Deputy County Counsel
By /s/ James Dexter Clark
James Dexter Clark
Attorneys for Defendants

EXHIBIT A
Senate Bill No. 389
CHAPTER 1126

An act to add Sections 225, 225.1, and 225.2 to the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor September 28, 1975.
Filed with Secretary of State September 28, 1975.]

LEGISLATIVE COUNSEL'S DIGEST

SB 389, Marks. Property taxation: exemption of property in transit.

Under existing law, tangible personal property having situs in California on March 1st is generally subject to property taxation. However, 50% of the assessed value of personal property constituting business inventories is exempt from taxation.

This bill would exempt in full personal property manufactured or produced outside California and brought into the state for transshipment in foreign commerce out of the state for sale. The bill would provide two methods of computing and claiming the exemption.

The bill would also provide that neither an appropriation is made nor an obligation created for the reimbursement by the state of any local agency for any revenue lost by it as a result of the exemption of property from taxation by this act.

The people of the State of California do enact as follows:

SECTION 1. Section 225 is added to the Revenue and Taxation Code, to read:

225. Personal property manufactured or produced, (1) outside this state and brought into this state for transshipment out of the United States, or (2) outside of the United States and brought into this state for transshipment out of this state, for sale in the ordinary course of trade or business shall be exempt from taxation. The exemption under this section shall not apply to personal property in manufacturing process or

production. Such process or production shall not include the breaking in bulk, labeling, packaging, relabeling, or repackaging of such property.

SEC. 2. Section 225.1 is added to the Revenue and Taxation Code, to read:

225.1. A person claiming an exemption under Section 225 may either claim this exemption by (1) a percentage method of determining property held for transshipment on hand at a particular location by allocating a portion of the total inventory, using the percentage determined by dividing the total out-of-state shipments by the taxpayer from that location during the preceding year by the total of such shipments from that location during such year, or (2) an actual method as evidenced by contracts of sale on the tax lien date, and a full, true and correct inventory of all property held for transshipment together with the date of receipt of the same, the date of withdrawal of the same, the point of origin thereof, and the point of ultimate destination thereof.

SEC. 3. Section 225.2 is added to the Revenue and Taxation Code, to read:

225.2. Any property exempted under Section 225 which is reconsigned to a final destination in this state shall be subject to escape assessment procedures.

SEC. 4. No appropriation is made by this act, nor is any obligation created thereby under Section 2229 of the Revenue and Taxation Code, for the reimbursement of any local agency for any revenue lost by it as a result of the exemption of property from taxation by this act because the net loss of revenues to any local agency is not significant.

EXHIBIT B.

SCHEDULE OF SHIPMENTS FROM CALIFORNIA WAREHOUSES

Department	California Shipments	Out-of-State Shipments	Total Shipments	Inventory as of March 1, 1976
1430 South Eastman Avenue				
601	50,367	380,091	430,458	142,873
603	1,478,837	4,494,427	5,973,264	2,474,658
604	90,980	164,677	255,657	85,863
606	1,127,526	1,290,064	2,417,590	1,340,701
607	747,102	4,355,370	5,102,472	4,169,945
620	4,691,344	2,937,071	7,628,415	1,531,832
621	438,453	223,257	661,710	136,756
622	1,156,182	604,208	1,760,390	667,174
624	199,790	407,368	607,158	333,370
627	829,329	264,791	1,094,120	819,204
629	1,065,396	3,892,509	4,957,905	2,009,070
634	391,216	434,315	825,531	843,346
637	8,783	66,380	75,163	38,398
640	243,864	1,108,940	1,352,804	255,441
642	24,738	11,544	36,282	53,434
649	204,238	316,438	520,676	260,831
657	12,323,076	6,165,506	18,488,582	2,813,246
664	50,362	27,066	77,428	19,436
671	189,480	237,439	426,919	92,343
677	692,824	1,288,235	1,981,059	910,279
688	95,630	62,042	157,672	163,393
615 West Walnut Street				
615	1,229,555	5,433,504	6,663,059	5,905,920
19400 Laurel Park Road				
615	762,953	3,371,554	4,134,507	3,664,694
2834 Supply Avenue				
611	23,410	70,229	93,639	29,060

EXHIBIT C.

EXEMPTION CLAIM FOR GOODS HELD FOR TRANSSHIPMENT

Name .....

Mailing Address .....

Location of Property .....

The cost of goods claimed to be exempt must be included in Line 20, Schedule A, AH 571-L (Business Property Statement—long form) or Line 2, Inventory Schedule, AH 571-S (Business Property Statement—short form) filed for this location.

This statement constitutes a claim for exemption from ad valorem tax on goods manufactured or produced outside this state and brought into this state for transshipment outside the United States or which were manufactured outside the United States and brought into this state for transshipment outside this state. Please answer the following questions:

1. Were the goods, for which the transshipment exemption is being claimed, at the above location as of 12:01 a.m., March 1, this year and were they manufactured or produced outside this state?

   Yes .....No .....

2. Were they held for transshipment to another state from outside the United States or for transshipment outside the United States from another state?

   Yes ..... No .....

3. Were the goods being claimed as exempt in this state for the purpose of manufacturing process or production?

   Yes ..... No .....

4. Total cost of goods claimed exempt under the transshipment exemption and held at this location as of 12:01 a.m., March 1, this year. (See instructions below.) Enter amount here and on Line 36, Schedule A, AH 571-L (Business Property Statement—long form) or Line 15, Inventory Schedule, AH 571-S (Business Property Statement—short form)

   $.....

INSTRUCTIONS

You may elect either of two methods to claim this exemption. See Section 225.1 of the Revenue and Taxation Code shown below.

Check which method you have elected:

I. Percentage;

II. Actual

Complete the following information for the method you have selected.

I. PERCENTAGE METHOD (List the following amounts at cost.)

   (a) Your total shipment of goods manufactured or produced outside of California and transshipped from this location out of the United States for the previous assessment year. (Assessment year is prior 12 months period March through February.)

   $.....

   (b) Your total shipment of goods manufactured or produced outside of the United States and trnasshipped from this location to another state for the previous assessment year.

   $.....

   (c) Total of Lines (a) and (b).

   $.....

   (d) Your total shipments of all goods from this location for the previous assessment year.

   $.....

   (e) Divide Line (c) by Line (d) and enter percentage here.

   .....%.

   (f) Total cost of all such goods at this location as of 12:01 a.m., March 1, this year.

   $.....

   (g) Multiply the percentage on Line (e) by the amount on Line (f) and enter the result on Line 4 above.

II. ACTUAL METHOD (Goods claimed exempt under the actual method must be supported by contracts of sale as of 12:01 a.m., March 1, this year. Attach sheets supplying the following information for goods claimed exempt.)

   a. Quantity and description of goods claimed exempt on Line 4 above.

   b. Total landed cost.

   c. Country or state of origin.

   d. Date goods received at this location.

e. Point of ultimate destination as evidenced by contracts of sale executed before 12:01 a.m., March 1, this year.

f. Date goods shipped to their ultimate destination.

g. Enter at Line 4 above the cost of goods claimed exempt under the actual method.

I declare under penalty of perjury that the foregoing information, including any accompanying schedules and statements, is true, correct, and complete.

Corporate or Owner's Name .....

By .....

Title .....

Date ....., 19.....

REVENUE AND TAXATION CODE SECTIONS

Sec. 225 Personal property manufactured or produced, (1) outside this state and brought into this state for transshipment out of the United States, or (2) outside of the United States and brought into this state for transshipment out of this state, for sale in the ordinary course of trade or business shall be exempt from taxation. The exemption under this section shall not apply to personal property in manufacturing process or production. Such process or production shall not include the breaking in bulk, labeling, packaging, relabeling, or repackaging of such property.

Sec. 225.1 A person claiming an exemption under Section 225 may either claim this exemption by (1) a percentage method of determining property held for transshipment on hand at a particular location by allo-

cating a portion of the total inventory, using the percentage determined by dividing the total out-of-state shipments by the taxpayer from that location during the preceding year by the total of such shipments from that location during such year, or (2) an actual method as evidenced by contracts of sale on the tax lien date, and a full, true and correct inventory of all property held for transshipment together with the date of receipt of the same, the date of withdrawal of the same, the point of origin thereof, and the point of ultimate destination thereof.

Sec. 225.2 Any property exempted under Section 225 which is reconsigned to a final destination in this state shall be subject to escape assessment procedures.

IMMUNITY CLAIM FOR GOODS IN INTERSTATE OR FOREIGN COMMERCE

Name .....

Mailing Address.....

Location of Property .....

The cost of goods recorded but not on hand and claimed to be immune must be included in Line 20, Schedule A, AH 571-L (Business Property Statement—long form) or Line 2, Inventory Schedule, AH 571-S (Business Property Statement—short form) filed for this location. (Do NOT include in Line 20 or Line 2 nor is a claim form required if the goods are both not recorded and not on hand.)

This statement constitutes a claim for immunity on goods in transit in interstate or foreign commerce as of 12:01 a.m., March 1, this year. Please answer the following questions:

Part 1. GOODS IN TRANSIT FROM OTHER STATES OR COUNTRIES

a. The goods originated from another state or foreign country?

Yes ..... No .....

b. The goods were in the hands of a common carrier as of 12:01 a.m., March 1, this year?

Yes ..... No .....

c. Were the goods available for disposition as of 12:01 a.m., March 1, this year?

Yes ..... No .....

d. Are bills of lading or other documents which support this claim available on request?

Yes ..... No .....

e. Total cost of goods claimed immune is

$.....

Part 2. GOODS IN TRANSIT TO OTHER STATES OR COUNTRIES

a. The goods claimed to be immune were loaded aboard a ship or aircraft or were within the control of a carrier for continuous transportation to another state or country as of 12:01 a.m., March 1, this year?

Yes ..... No .....

b. Are bills of lading, dock receipts, foreign purchase orders, or other documents which support this claim available on request?

Yes ..... No .....

c. Total cost of goods claimed immune is

$.....

Enter here and on Line 35, Schedule A, AH 571-L (Business Property Statement—long form) or Line 14, Inventory Schedule, AH-571-S (Business Property Statement—short form) the total cost of goods claimed immune in Part 1 and Part 2 above.

$.....

I declare under penalty of perjury that the foregoing information, including any accompanying schedules and statements, is true, correct, and complete.

Corporate or Owner's Name .....

By .....

Title .....

Date ....., 19.....

Property is in transit in interstate or foreign commerce when it has been delivered to a carrier or, if delivery to destination is being made by the owner, when he has actually started transporting the property to its destination. Property is constructively received when it reaches its destination and is made available for disposition by the consignee of the shipment.

The interruption of transportation for purposes incident to transportation does not remove property from its in-transit status. The interruption of transportation for the business purpose or profit of the owner terminates the transportation and creates a situs for taxation at the place where the property is situated on the lien date.

Thus, property remains in transit if the interruption is caused by a breakdown in the transportation system

or equipment, the promotion of safe or convenient transit, or the accumulation by the carrier of sufficient cargo to make a load. On the other hand, property does not remain in transit if the interruption is for the purpose of further processing the goods, placing them in different containers, separating them for easier distribution to customers, storing them awaiting a favorable market, or any other purpose unconnected with transportation.

NOTE—Certain goods may be eligible for a transshipment exemption even though transit is interrupted. See the "Exemption Claim for Goods Held for Transshipment" on the reverse.

Notice of Motion for Summary Judgment; Declaration of Theodore F. Craver; Memorandum of Points and Authorities in Support of Motion.

Hearing Date: February 16, 1978
Time: 9:00 a.m.
Place: Dept. 47

Superior Court of the State of California, for the County of Los Angeles.

Sears, Roebuck and Co., a corporation, Plaintiff, vs. County of Los Angeles, et al., Defendants. No. C 191 156.

Filed: January 23, 1978.

TO THE DEFENDANTS AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 16, 1978, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 47 of the above-entitled Court, located at 111 North Hill Street, Los Angeles, California, plaintiff Sears Roebuck & Co., will move said Court for summary judgment in favor of plaintiff and against all of said defendants.

Said motion will be made upon the grounds that there is no defense to the complaint herein, that no triable issue exists as to any material facts and that plaintiff is entitled to a judgment as a matter of law.

Said motion will be made and based upon this Notice, the Declaration and Memorandum of Points and Authorities served and filed concurrently herewith, upon the papers, pleadings and records on file herein, and upon such additional declarations that may be filed prior to the hearing hereon and upon such matters of which the Court may take judicial notice.

DATED: January 23, 1978.

LOEB AND LOEB
/s/ By Frank M. Keesling
Frank M. Keesling
Attorneys for Plaintiff

DECLARATION OF THEODORE F. CRAVER, JR.

I, THEODORE F. CRAVER, JR. declare:

1. I am, and for the past four years, have been employed by Security Pacific National Bank. For nearly four years I worked in the Research Department and had particular emphasis in international trade and foreign investment analysis. I am personally familiar with the facts set forth in this Declaration, and if called as a witness, I could competently testify thereto.

2. As a public service, Security Pacific National Bank in 1974 undertook a study and prepared a report entitled *Impact of the Ad Valorem Tax on Containerized Imports on the California Economy*. The study was thought to be necessary following the uncertainties which were created by differing interpretations of the decision by the California Supreme Court in the case entitled *Volkswagen Pacific, Inc. v. City of Los Angeles*. One of the basic purposes of the study was to determine the impact upon the California economy of the ad valorem property tax on containerized imports. The study was based upon an analysis of data obtained from (1) companies involved in importing, shipping, warehousing, and custom house brokers; (2) trucking firms, and (3) trade flows.

3. I was the individual in charge of the study, and based upon the data gathered and analyzed, I prepared the report dated April 30, 1975 entitled *Impact of the Ad Valorem Tax on Containerized Imports*

on the California Economy. A true and correct copy of the report of April 30, 1975 is attached and incorporated herein by this reference as though set forth in full.

4. Following the preparation of the report of April 30, 1975, I was invited to testify before the Senate Revenue & Taxation Committee. At the time I appeared, the Committee was holding hearings on proposals to create a "free port" in California for imported property destined to be sent outside California.

5. I testified, following the preparation of the April 30, 1975 report, before the Senate Revenue & Taxation Committee. In connection with my appearance before the Committee, there was distributed to each member a copy of the April 30, 1975 report, identical to the copy attached hereto. In addition, a copy of the report was distributed to each member of the Assembly Revenue & Taxation Committee. In addition to the distribution of the report to each member of the Revenue & Taxation Committee of both houses, copies were also distributed to various interested legislators who were not members of these committees.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of January, 1978 at Los Angeles, California.

/s/ Theodore F. Craver, Jr.
Theodore F. Craver, Jr.

IMPACT OF THE AD VALOREM TAX ON CONTAINERIZED IMPORTS ON THE CALIFORNIA ECONOMY

APRIL 30, 1975

BY
THEODORE F. CRAVER, JR.
INTERNATIONAL STUDIES SECTION

ECONOMIC RESEARCH DIVISION
RESEARCH DEPARTMENT
SECURITY PACIFIC NATIONAL BANK

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CALIFORNIA INTERNATIONAL TRADE STUDY

INTRODUCTION

International trade through California has been growing at an exceptionally rapid rate in the past ten years on both a value and a volume basis. Total trade in terms of value has increased 468 percent during this period, or at an average annual rate of 46.8 percent. While exports have grown 371 percent during this ten year period, imports have increased 571 percent. Also during this period, the trade balance for the state has reversed from a trade surplus of $119 million to a deficit of $3.3 billion. In 1974, imports accounted for 57.3 percent of the state's total trade, and exports accounted for the remaining 42.7 percent. Also, in 1974, California trade represented 11.5 percent of the total trade recorded for the United States (compared with 8.3 percent in 1965). At the same time, imports through California accounted for 13.1 percent and exports accounted for 9.9 percent of the nation's imports and exports.

While one can easily draw the conclusion that trade through California has grown tremendously in the past decade, it is important to view this growth in relation to other measures of California's economic growth. One such measure that can be used for illustrative purposes is personal income. During the past ten years personal income in the state has increased 108 percent (compared with a 486 percent growth in total trade during the same period), from $60.1 billion to $124.9 billion. Though it is difficult to make direct comparisons between trade and personal income, it is interesting to note the following "share" of personal income represented by international trade.

INTERNATIONAL TRADE AS A PERCENTAGE OF PERSONAL INCOME

Year	Imports	Exports	Total Trade
1965	3.5%	3.3%	6.8%
1974	10.5%	7.8%	18.3%

The degree of economic impact from imports has steadily increased along with its share of California's total trade. The recognition of this impact has generated increased concern over the possibly unfair tax advantages that importers may possess over domestic manufacturers. Certain proponents of the ad valorem tax on containerized imports have stated that the tax was, in part, imposed so as to reduce these purported advantages held by importers.

DESCRIPTION OF THE TAX

As a result of a California Supreme Court ruling (*Volkswagen Pacific, Inc. v. City of Los Angeles,* 7 Cal 3d 48), certain county tax assessors have removed the immunity of the contents of incoming sea-van containers from the state's ad valorem inventory tax. The

previous interpretation of the "original package doctrine" was that goods from a foreign country are not subject to state and local taxation while they remain unsold and in the original, unbroken package (*Article I, Section 10, Clause 2, U.S. Constitution*). However, the assessing officials now have stated that a shipping (air and sea-van) container is the "original package", and once the container is opened, the goods inside are subject to assessment for inventory tax purposes.

The tax is assessed as of March 1 every year. The inventory tax is based on the assessed value of the merchandise, which is 25 percent of one half of the true market value of the goods. The tax rate levied varies from county to county and even within a particular county. Depending on the location of a business within a county, the tax rate per $100 of assessed value ranges from $7.00 to $16.50 in Alameda County and $9.00 to $13.00 in Los Angeles County. (The average rate in Los Angeles County is $12.00. Thus, for example, a tax of $150.00 would be paid for an opened container valued at $10,000.00.)

Numerous claims have been made by affected firms stating that the tax is an arbitrary one, since a shipment of goods imported by container is taxed, whereas if that same shipment of goods had been imported break-bulk it would not be subject to the tax. The California State Board of Equalization, as called for in Senate Concurrent Resolution Number 154, reviewed the legal issues and found that, "The sea-van itself is not an "original package" as a matter of law. If imported goods contained therein are packaged in a manner that has customarily been used in world commerce for the type of goods concerned, an opening of the

van will not destroy immunity from property taxation." However, the legal battle is expected to continue for some time into the future, since certain County Tax Assessors state that the State Board of Equalization has no authority to rule on the constitutionality of federal law. Numerous lawsuits against the counties levying the tax are pending at this time. Recently, Montgomery Ward & Co. won its case against Alameda County, but the Alameda County Tax Assessor's office stated that it will appeal all the way to the U.S. Supreme Court, if necessary.

In a special report to the Senate Select Committee on Maritime Industry entitled "Ad Valorem Tax on Containerized Cargo" the following list of countries and revenues collected from the tax was presented. As stated in that report, the source of the list was a June 19, 1974, memorandum from Mr. Ronald B. Welch, of the State Board of Equalization, to the Assembly Committee on Revenue and Taxation.

County	Revenues
Alameda	$ 868,750
Contra Costa	100,000
Los Angeles	9,000,000
Monterey	3,500
San Francisco	172,000
San Luis Obispo	0
San Mateo	379,000
Santa Barbara	3,000
Santa Cruz	0
Solano	0
Ventura	0
Total	$10,526,323*

*Santa Clara County had not yet responded to the inquiry at the time of this memorandum, and subsequently our committee has been informed that Sacramento County has begun to tax imports. An up-dated list will be provided our committee by the Board of Equalization next month.

As the legal issues have worked their way through the court system, the economic issues have been largely ignored. The primary reason for this lack of attention is the absence of data on the impact of the inventory tax on international business in California and on the state's economy.

PURPOSES AND OBJECTIVES OF THE STUDY

The primary purposes of the California International Trade Study are twofold. First, the report attempts to assess the economic and financial strength of importing businesses and of some of the major service industries associated with the import business (such as warehouses and customs house brokers). Second, the study attempts to determine the scope of the impact of the ad valorem tax on the importing business. In this regard, the basic objectives were to:

(1) Quantify wherever possible, the economic impact of the tax.

(2) Explore those areas in the economy that are affected by the tax.

(3) Determine the present and explain the major factors influencing future impact of the tax.

The study is based on the analysis of data obtained from three basic gathering tools:

(1) *Importing, warehousing, shipping companies, and customs house brokers*—The data gathering tool was a five page questionnaire. The objective of the questionnaire was to determine which firms are affected by the tax, to what degree, and how.

(2) *Trucking firms*—Again, the data gathering tool was a five page questionnaire. The objective of the questionnaire was to determine if trucking

firms have been affected by the tax and to describe the extent and pattern of the diversion of goods, if any. (The assumption involved in this case was that, if a diversion of goods from California ports to other "free ports" was occurring, the traditional trucking patterns would be disrupted and the trucking firms would be aware of those disruptions and why they occurred.)

(3) *Trade flows* (interstate and intrastate)—The primary tool for this analysis was Security Pacific Bank's International Trade Databank. The analysis was performed on a per commodity basis, in an attempt to determine which commodities are imported by container and, of those, which have experienced diversion to free port areas to avoid the tax.

As a final note, Security Pacific Bank's Research Department is of the opinion that, while international trade in California is increasing tremendously, the amount and quality of statistical and analytical support have not kept pace. This study is an attempt to reduce this gap by offering research and analysis as a public service to assist both policy-makers and businesses in resolving certain issues relating to international trade that ultimately affect the people of California.

FIRMS AFFECTED

THE QUESTIONNAIRES

The questions in the importers/warehouses and the trucking companies questionnaires were designed to obtain the following information.

(1) The problems that have the most effect on the international business community.

(2) The present and future financial and economic condition of the international business community, in terms of employment and sales.

(3) Current plans of those companies involved in international trade for *expansion* of their facilities in California.

(4) Current plans of those companies involved in international trade in California for *relocating* any part or all of their facilities to another state.

(5) The costs of conducting business in California compared with other states.

(6) Awareness of the ad valorem tax among internationally related companies.

(7) Whether international trade related companies are diverting any of their goods or business to "free port" areas to avoid the inventory tax.

(8) Whether companies currently (or are planning to) divide up their business, so that goods bound for California consumption are handled by a California branch, and goods bound for out-of-state consumption are handled through a free port area.

(9) The affect that the ad valorem tax has had on the international trade related companies' plans for doing business in 1975.

(10) The inflationary impact of the tax.

(11) The type of goods imported and the type of goods subject to the ad valorem tax.

(12) The percentage of goods, on an average annual basis, that are imported by container, and the growth of imports in 1975 shipped by container.

METHODOLOGY

In the importer/warehouser/shipping company/ customs house broker sample, a questionnaire was mailed to the California based companies listed in the *1974/1975 California International Business Directory* that were either importers or importers/exporters. Those companies listed in the directory as solely exporters were excluded from the sample. In addition, California-based-warehousers, shipping companies and customs house brokers found in the Dun and Bradstreet Company directory were included.

In the trucking company sample, a different questionnaire was mailed to a select sample of California based trucking companies found in the Dun and Bradstreet Company directory. Only those companies listed as long range carriers were considered.

A total of 271 questionnaires from the importer/ warehouser, shipping company/customs house broker sample, and a total of 94 questionnaires from the trucking companies sample, were completed and returned for editing, coding, keypunching, and tabulation. Chi Square analysis was performed on the samples which determined that they adequately represented the entire population of importers, warehousers, customs house brokers and trucking firms and that no significant variations occurred between the demographic characteristics of the samples and the populations.

To ensure that the mail questionnaire had been completed by the person in the company best able to supply accurate information, all respondents were asked to include their titles. The following table demonstrates that the questionnaire was completed by the appropriate persons:

Who Completed Questionnaire:	Importer, Warehouser, Shipping Company, Customs House Broker Sample	Trucking Firms Sample
OWNER/PARTNER	14%	24%
PRESIDENT	40%	53%
VICE-PRESIDENT	20%	11%
SECRETARY-TREASURER	7%	3%
MANAGER/ GENERAL MANAGER/ SALES MANAGER	14%	6%
ACCOUNTANT/ CONTROLLER	5%	3%
	100%	100%

COMPANY ANALYSIS

Sales Volume—Import firms tend to have lower dollar sales volume than warehousing and import manufacturing firms. Among importers, the larger the firm's sales volume, the more likely it is to use containers.

Effect of the Ad Valorem Tax on Containerized Cargo Imports—Among those firms using containers for imported goods, the ad valorem tax was considered to be one of the major problems facing international businesses in California today. In addition, the ad valorem tax was more frequently mentioned as a problem among those companies that import less than 50 percent of their goods by container—this is perhaps the inverse of what might be expected. Also, manufacturing firms that use imported goods in their operation and import these goods by container are less affected by the tax, compared with importing firms and warehouses.

Those firms that are affected by the ad valorem tax are either changing their operations or making plans to do so, by diverting goods to free port areas, relocating part of their facilities out of California,

or dividing their overland common point (OCP) goods from their goods bound for California consumption.

Firms that conduct between 10 and 50 percent of their total sales volume in California are changing their operations more than those firms conducting more than 50 percent of their total sales volume in California. Among the firms affected by the tax, manufacturing firms are the only firms not changing their operations. Those "container" firms affected by the tax and relocating part of their facilities out-of-state are also diverting cargo and dividing OCP goods for California consumption goods.

Expansion—More "container" firms than "noncontainer" firms are *not* expanding. Firms that feel the tax has affected their business are not expanding their facilities in California. Those firms that do not feel the tax has affected them are moe likely to have expansion plans in California. This difference becomes more pronounced as sales volume increases and is particularly true of warehousing firms. Smaller "noncontainer" firms are more likely to be expanding their facilities while large "container" firms are less likely to be expanding.

Relocation of Facilities Out of State—The relocation of part of all of a firm's facilities out-of-state is occurring more often among "container" firms than "noncontainer" firms. Among those firms relocating because of the tax, importers are the most prevalent. A higher percentage of those firms that feel affected by the tax are relocating, compared with those firms that do not feel affected by the tax and that have a pessimistic outlook for 1975 are relocating. Among "container" firms, those that feel affected by the tax are more

likely to be relocating than other "container" firms. Also, those firms that perceive that the cost of doing business in California is increasing, relative to other states, and "container" firms with between 10 and 50 percent of their sales volume in California are likely to be relocating.

Diverson of Goods—Import firms using containers are the most *likely* to be diverting goods. Also, the larger the share of total goods imported by container, the larger the percentage of goods diverted.

1974 Versus 1973 Performance and the 1975 Outlook—More "container" firms than "noncontainer" firms stated that they fared worse or the same in 1974 versus 1973. Likewise, more "container" firms than "noncontainer" firms have a pessimistic outlook for 1975. Firms that feel affected by the ad valorem tax performed worse in 1974 and have a pessimistic outlook for 1975 than those firms that do not feel affected by the tax. In fact, it is twice as likely that firm that feels affected will be pessimistic about 1975.

A pessimistic 1975 outlook among those firms affected by the tax is more likely the greater their total sales volume. Among those firms affected by the tax, importers tend to be much more pessimistic in their outlook for 1975 than warehousers. Finally, among all firms that feel the cost of doing business in California has increased relative to other states, the firms that are affected by the tax have a more pessimistic outlook for 1975 than those firms not affected by the tax.

SUMMARY OF RESPONSES TO SELECTED QUESTIONS FROM THE TRUCKING FIRMS QUESTIONNAIRE

Between eight and nine percent of the total respondents stated that the inventory tax was one of the three most important problems facing international business today. Among those trucking firms aware of the tax, 24.1 percent viewed the tax as one of the top three problems.

Thirty-one percent of the trucking firms were aware of the ad valorem tax on containerized imports. Among those companies providing in excess of $1 million of services there was a 38 percent awareness.

Twenty percent of the total respondents stated that portion of their business had been diverted to the "free port" areas to avoid certain counties in California imposing a tax on containerized imports. Among those firms aware of the tax, 41 percent responded that portions of their business had been diverted.

Thirteen percent of the total respondents estimated that up to 30 percent of their business had been diverted. Among those firms that have noticed a diversion of their business to "free port" areas, 63 percent estimated the amount of diversion to be up to 30 percent of their business.

Eleven percent of the total respondents stated that the tax on containerized imports has affected their plans for doing business in 1975, and among those firms aware of the tax, 28 percent said their business plans for 1975 had been affected.

Seventeen percent of the total respondents indicated an awareness of an increase in the transport of goods from "free port" areas into California. Among those

firms that have experienced a diversion of their business, 68 percent noticed an increase.

All three groups of firms listed in the paragraph above indicated that the majority of the increase in shipments of goods from the "free ports" into California was between 10 and 30 percent.

IMPACT OF THE AD VALOREM TAX ON THE CALIFORNIA ECONOMY

The study was designed to determine the economic impact of the ad valorem tax on containerized imports. In this effort, we developed ten questions to obtain the data necessary to make an economic evaluation of the tax. Our findings are presented in terms of those questions below.

(1) *Is the tax viewed as an important business problem by international businesses?*

Thirteen percent of the importers and seventeen percent of the warehousers polled viewed the tax as a leading problem. By applying these percentages to the total number of importers and warehousers in California, it would appear that approximately 150 to 200 importers and 225 to 275 warehousers view the tax as a leading problem.

The top three problems cited by the firms—(1) rising transportation costs/ocean freight rates; (2) Inflation, (3) Recession/lack of demand—are all economically caused problems. Importantly, the fourth most troublesome problem—the ad valorem tax on containerized imports—is the major non-economically caused problem.

(2) *Did the tax adversely affect the 1974 business performance of the companies?*

The questionnaire asked the firms to state whether their 1974 business performance was better, worse, or about the same as their 1973 performance. Then they were asked to state the *primary* reason for their 1974 performance. From the data obtained, it appears that the tax was not the *primary* cause for a comparatively poor 1974 business performance (only two companies cited the tax as the primary reason for their company's difficulties which is statistically insignificant in terms of the total sample). However, it is highly probable that the ad valorem tax was considered a secondary factor in the relatively poor performances, especially among the 15 percent citing "higher expenses" as the primary cause.

(3) *Is the tax expected to affect the 1975 business performance adversely, as viewed by the companies?*

Again, as in the question above, the questionnaire asked the firms for the *primary* reason why the companies expected their 1975 performance, when compared to 1974, to be better, worse, or about the same. From the data collected, it appears that the tax is expected to be insignificant in its effect on the companies anticipating a poor 1975 performance. Two companies expected the tax to have a damaging effect on their 1975 performance, which is statistically insignificant in terms of the total sample. Again, however, it is probable that the tax is considered to be a

secondary factor among those firms anticipating a poor performance in 1975, especially among the 13 percent responding that "negative governmental interference" was the primary reason for the expected poor performance.

(4) *Is the tax affecting business plans and operations?*

Almost one quarter of the companies polled stated that the tax has affected their plans for doing business in 1975. Among importers and warehousers, the proportion was even higher, indeed almost one-third. The primary responses as to how the tax was affecting their business plans were, in order of importance (1) reducing inventories in the months preceeding the March 1st tax date; (2) channeling business through other ports; (3) changing the packaging to get around the tax; and (4) increasing prices to cover the tax expense.

(5) *Is the tax affecting the planned growth of facilities?*

The data shows that the tax is the *primary* reason for not expanding the facilities in California of a small percentage of the companies polled (5 percent of the warehousers and 2 percent of the importers). However, it should be pointed out that in the questionnaire only the *main* reason for expanding or not expanding was asked. Therefore, it is probable that the tax was one of the lesser reasons for not expanding and hence is affecting the planned growth of California facilities more than is shown in the data.

(6) *Is the tax causing companies to relocate part or all of their facilities out of California?*

The data shows that 23 percent of the companies planning to relocate part or all of their facilities out of California are doing so because of the tax. However, only the primary cause for a relocation was solicited in the questionnaire, and it is probable that the tax was one of the secondary causes—especially among the 15 percent that responded that "California taxes" in general were the reason for their moving.

(7) *Is the tax causing a more rapid increase in the cost of doing business in California relative to other states?*

Eight percent of the companies felt that the tax was the primary reason for a more rapid increase in the cost of doing business in California relative to other states. It is probable that more firms felt that the tax was a secondary cause for the relative increase, especially among the 23 percent that stated "higher taxes" in general was the primary cause.

(8) *Is the tax contributing to the rise in prices paid by the consumer?*

The assumption in this question is that the business currently paying the tax can either absorb the cost of the tax, pass it on, or do a little of each. The data from the questionnaire shows that almost 60 percent of the companies are passing the cost on to the consumer, 20 percent are absorbing the cost, and the remaining 20 percent said the question did not apply to them. Importers were more likely to pass the cost on to consumers,

while more warehousers were inclined to absorb the cost.

(9) *Is the tax causing a diversion of goods from California to "free port" areas?*

Of all companies polled, 10 percent indicated that they were diverting goods due to the tax. However, a more meaningful measure is among those firms involved with containerized imports, among whom 14 percent have been diverting their goods. Based on the percentage of firms diverting goods in the study group, it is estimated that 145 California-based importers and 195 California-based warehousers are diverting some of their goods.

Although it is important to attempt to determine the *number* of firms *currently* diverting goods, it is equally important to attempt to estimate the *dollar* amount of goods that is currently being diverted. However, this is a substantially more difficult quality to estimate. By taking the data from the questionnaire pertaining to average annual sales, cross-tabulating these values with the percent of goods diverted, and the making assumptions on the average gross margins realized by the different types of importing and warehousing firms, an estimate was made of the 1974 dollar amount of goods diverted by the firms in the sample. Based on this approach it is estimated that $16,168,700 was diverted by firms in the sample in 1974. By taking this figure and applying it to the total universe of California-based importers and warehousers, it is estimated that total imports of $211.4 million were diverted in 1974. It is important to emphasize that the universe

used to estimate this dollar amount and to derive the sample was only California-based companies and, hence, does not represent the total number of importers and warehousers that are involved in the importation of goods through California ports of entry. Indeed, based on figures presented in the "1972 Census of Wholesale Trade", published by the U.S. Department of Commerce, it was determined that the California-based importers represented 54.9 percent of the total imports flowing through California ports of entry. It would be misleading to attempt to apply this percentage to the $211.4 million figure presented above in an effort to determine the total dollar amount of goods diverted by both California-based and non-California based importers and warehousers because the sample did not represent non-California-based companies. However, it is highly probable that some portion of the non-California-based companies did divert some percentage of the goods, hence increasing the total impact of the tax.

(10) *Is the tax reducing the amount of "Overland Common Point" goods brought in through California?*

Based on the data from the questionnaires, the most severe impact of the tax was directed at OCP goods. Thirteen percent of the companies stated that they are currently dividing up their business to have goods bound for California consumption imported by a California branch and OCP goods imported through a "free" port. Two thirds of those companies cited the tax as the primary reason for doing so. Notably, of those companies *not* currently dividing their imports,

16 percent are planning to do so—85 percent of whom are doing so primarily because of the tax.

Again, it should be emphasized that the sample included only California-based companies. It is highly probable that non-California-based companies would also be dividing goods for California consumption from OCP goods. Indeed, it is probable that non-California-based companies would have greater flexibility to divide OCP goods from California consumption goods, and hence contribute a more pronounced effect on the loss of OCP traffic.

In terms of its impact on the California economy, the loss of OCP traffic due to the ad valorem tax on containerized imports is probably the most severe. One reason for this impact is that over the years, California has developed as the major West Coast distribution center for the entire United States. Thus, by definition, the loss of OCP traffic results in the deterioration of California's industries involved in the nationwide distribution of goods. Furthermore, OCP goods represent a much different impact on the California economy from imports that are consumed in California in terms of their effect on employment and income. Imports that are consumed in California actually act as competition to locally manufactured goods and hence have a net negative impact on employment and income. OCP goods, however, are, by definition, not consumed in California and hence do not act as direct competition to locally produced goods. Indeed, they contribute employment and income, since they must be han-

dled, comingled, processed, and shipped to other states. Thus, since the tax is decreasing OCP traffic through California, it is ultimately decreasing employment and income in the state, as well.

CONCLUSION

Analysis of the data shows that the ad valorem tax on containerized imports has had a definite impact on the California economy. Some of the reactions by the affected firms have shown that the tax has disturbed their usual (pretax) operations. Some of these reactions include a reduction of inventory in the months immediately preceding the March 1 lien date and an attempt to import more goods breakbulk or by palate instead of by container. While these actions very likely produce inventory flow problems, and to a lesser degree cash flow problems, their overall adverse impact on the California economy is probably very slight. However, the data show that the tax has spawned certain more severe reactions. The most disturbing of these are (1) relocations of part or all of business facilities out of California, (2) the hindering of the expansion of facilities within California, (3) an inflationary impact, (4) the diversion of goods from California ports, and (5) the loss of OCP trade from California ports. All of these effects have a negative impact on employment and real income.

This study is an attempt to quantify what the impact of the tax has been on the California economy. It should be noted that the study has addressed itself to certain economic issues relating to the tax and should not be interpreted to have represented either all the firms involved or all of the possible impacts of the tax on the California economy. Also, the study

has attempted to assess the past and current impact of the tax and has not dealt completely with the future impact of the tax. However, the firms that have the greatest potential to be affected by the tax and the most important economic issues have been studied in this report, and analysis of the data has shown that there has been a significant negative impact on trade flows and on the operations of international businesses.

Cross-Motion for Summary Judgment.

Memorandum of Points and Authorities.

Date: February 16, 1978
Time: 9:00 A.M.
Dept: 47

Superior Court of California, County of Los Angeles.

Sears Roebuck & Co., a corporation, Plaintiff, v. County of Los Angeles, etc., et al., Defendants. Case No. C 191156.

TO THE PLAINTIFF AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 16, 1978, at 9:00 A.M. or as soon thereafter as the matter can be heard, in Department 47 of the above-entitled court, located at 111 North Hill Street, Los Angeles, California, the defendants COUNTY OF LOS ANGELES and CITY OF LOS ANGELES will move that the motion of plaintiff be denied and that the court grant a summary judgment against the plaintiff.

Said Cross-Motion for Summary Judgment will be made upon the grounds that there is no cause of action maintainable by the plaintiff which it states in its complaint, and that defendants are entitled to a judgment as a matter of law.

Said motion will be based upon this notice, the attached memorandum of points and authorities, all papers, pleadings and records filed herein, such additional declarations and affidavits that may be filed prior to or at the hearing hereon, such matters that the court may take judicial notice of, and such other evidence, oral or documentary, as may be presented

to or filed with the court prior to or at the hearing hereon.

DATED: January 24, 1978

Respectfully submitted,
JOHN H. LARSON
County Counsel
by /s/ James Dexter Clark
JAMES DEXTER CLARK
Deputy County Counsel
Attorneys for Defendant
COUNTY OF LOS ANGELES

Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendants' Cross-Motion for Summary Judgment.

Superior Court of the State of California, for the County of Los Angeles.

Sears, Roebuck and Co., a corporation, Plaintiff, vs. County of Los Angeles, State of California, a body corporate and politic; City of Compton, State of California, a Municipal corporation, Does I-X, inclusive, Defendants. No. C 191 156.

Filed: March 7, 1978.

The Motion of plaintiff, Sears, Roebuck and Co., for Summary Judgment, and the Cross-Motion of defendants, County of Los Angeles and City of Compton, for Summary Judgment, came on regularly to be heard before the Honorable Campbell M. Lucas, Judge presiding, in Department 47 of the above-entitled Court, on February 16, 1978, at 9:45 a.m.; Loeb and Loeb by Andrew S. Garb, Frank M. Keesling and Terry L. Polley, appeared for plaintiff; John H. Larson, County Counsel, by James Dexter Clark, Deputy County Counsel, appeared for defendants.

After reading and considering all of the memoranda filed in support of said Motions and in opposition thereto, the documentary evidence attached to said memoranda, the Declaration filed in support of plaintiff's Motion, and the Stipulation of Facts entered into by the parties and filed herein on January 23, 1978, and after hearing oral argument, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. There is no triable issue as to any material fact, the parties having stipulated to, and the Court

having adopted, all of the facts necessary to determine the issues of law raised herein;

2. Pursuant to the relevant provisions of Section 225 of the Revenue and Taxation Code, personal property is exempt from ad valorem property taxation if it is manufactured or produced outside of the United States and brought into this state, for transshipment out of the state for sale in the ordinary course of trade or business;

3. Based upon the Stipulated Facts, the Court has concluded that the personal property which is the subject matter of this action, and which was held by plaintiff in distribution warehouses pending shipment to its retail stores and catalogue distribution centers, was manufactured or produced outside of the United States and brought into this state for transshipment out of this state, for sale in the ordinary course of plaintiff's business;

4. Sections 225 and 225.1 of the Revenue and Taxation Code are constitutional under the United States and California Constitutions, as said Sections have been construed herein, and as applied to the facts of this case;

5. This Court has concluded that the California Legislature intended under Sections 225 and 225.1 of the Revenue and Taxation Code to exempt the personal property such as that held by plaintiff at its distribution warehouses in Los Angeles County pending shipment to plaintiff's retail stores and catalogue distribution centers outside of California;

6. Accordingly, this Court has concluded that plaintiff is entitled to the exemption provided in Revenue and Taxation Code, Section 225, and is entitled to compute the aforesaid exemption under the percentage

method provided in Revenue and Taxation Code, Section 225.1;

7. Plaintiff is therefore entitled to a refund of the taxes paid under protest for the fiscal year 1976-77 from the County of Los Angeles and the City of Compton in the amount of $80,381.58, and from the County of Los Angeles in the additional amount of $204,142.13, plus interest thereon commencing August 30, 1976, pursuant to Revenue and Taxation Code, Sections 5141 and 5150; and

8. There being no defense to plaintiff's action, and plaintiff being entitled to judgment as a matter of law, plaintiff's Motion for Summary Judgment is granted, defendants' Cross-Motion for Summary Judgment is denied, and the Clerk is directed to enter Judgment accordingly.

DATED: March 7, 1978.

CAMPBELL M. LUCAS
Judge of the Superior Court